

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ROBERT EDWARD EATON,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 07-281-JJF
	:	
ELIZABETH BURRIS , Acting Warden,	:	
and JOSEPH R. BIDEN, III , Attorney	:	
General of the State of Delaware,	:	
	:	
Respondents. ¹	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Robert Edward Eaton, has applied for federal habeas relief, filing a habeas petition challenging his 1998 conviction and sentence for aggravated menacing, possession of a deadly weapon during the commission of a felony, second degree assault, first degree reckless endangering, second degree unlawful imprisonment and third degree assault. D.I. 1. By the terms of the Court's order, the answer is due to be filed on November 16, 2007. D.I. 15.

2. Counsel has been, and continues to be, diligently working on numerous cases before this Court and the state courts. However, the workload for the Appeals Division attorneys is currently very substantial. Moreover, the Chief of the Appeals Division has been out of the office for

¹ See Fed.R.Civ.P. 25(d)(1). Elizabeth Burris became Acting Warden of Delaware Correctional Center effective September 1, 2007, replacing former Warden Thomas Carroll, an original party to this case.

more than a week. Counsel has had to assist with administrative duties in his absence, which has severely limited counsel's available time to draft answers in various cases. Counsel is filing an answer in another habeas case today. At this stage, it is not practical to reassign the case to another prosecutor. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including December 21, 2007, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: November 15, 2007

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: November 15, 2007

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General of the State of Delaware,	:	
	:	
Respondents.	:	

ORDER

This ____ day of _____, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer,
and

WHEREAS, it appearing to the Court that the requested extension is timely made and good
cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before December
21, 2007.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2007, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF. I also hereby certify that on November 15, 2007, I have mailed by United States Postal Service, the same document to the following non-registered participant:

Robert Edward Eaton
SBI No. 202059
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan
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